

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FILED

NOV 03 2008

Clerk, U.S. District and
Bankruptcy Courts

IRA NIKELSBURG
Meadows Office Complex
301 Route 17 North, 6th Floor
Rutherford, NJ 07070

Plaintiff,

v.

FEDERAL DEPOSIT INSURANCE CORPORATION
550 17th Street, NW
Washington, DC 20429

Defendant.

Case: 1:08-cv-01899
Assigned To : Robertson, James
Assign. Date : 11/3/2008
Description: FOIA/Privacy Act

COMPLAINT

COMES NOW Ira Nikelsberg, *pro se*, and brings this complaint under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552 *et seq.*, to compel the Federal Deposit Insurance Corporation ("FDIC") to disclose agency records improperly withheld from Plaintiff and in support of its complaint states as follows:

JURISDICTION

1. This court has both subject matter jurisdiction over this action and personal jurisdiction over the defendant pursuant to 5 U.S.C. §§ 552(a)(4)(B), 701 *et seq.* and 28 U.S.C. § 1331.

VENUE

2. Venue is proper under 5 U.S.C. § 552(a)(4)(B), 702 and 28 U.S.C. § 1391.

PARTIES

3. Plaintiff, Ira Nikelsberg, is an individual citizen and resident of the state of New Jersey.

4. Defendant FDIC is an agency within the meaning of 5 U.S.C. § 552(f) and is in possession or control of the records requested by Plaintiff.

FACTUAL BACKGROUND

5. Plaintiff, as part of his profession, provides cash to parties that hold illiquid receivables such as bankruptcy claims.

6. On July 16, 2008, Plaintiff made a request under FOIA to the FDIC via facsimile which is the subject matter of this action. A copy of the Request is attached hereto as Exhibit A.

7. In a letter dated August 19, 2008, a copy of which is attached hereto as Exhibit B, the FDIC denied items numbered 4, 5, 6 and 7, four of the seven items in the request.

8. Items 4 and 6 requested contact information of **businesses** to whom the FDIC issued Receiver Certificates as uninsured depositors of NetBank and ANB Financial.

9. Items 5 and 7 requested contact information of **all** uninsured depositors of NetBank and ANB Financial to whom the FDIC issued Receiver Certificates.

10. The FDIC response stated that items “4 through 7 are being denied pursuant to subsections (b)(4) and (b)(6) of the FOIA. Subsection (b)(4) permits the withholding of commercial or financial information obtained from a person and considered privileged or confidential. Subsection (b)(6) permits the withholding of information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.”

11. On September 19, 2008, Plaintiff administratively appealed to the FDIC's Office of General Counsel.

12. By letter dated October 16, 2008, Charles L. Cope, FDIC Senior Counsel, affirmed that the FDIC was withholding the requested information by invoking FOIA Exemptions 4 and 6.

13. Plaintiff's administrative remedies were exhausted upon the FDIC's issuance of its final decision that it would continue to deny the disclosure of the records requested under items 4 through 7.

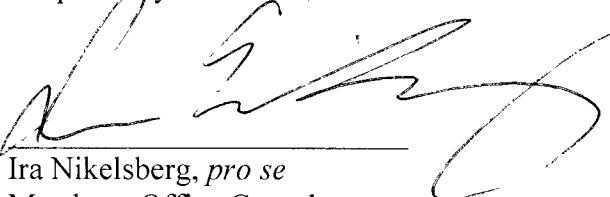
14. Plaintiff has a legal right under FOIA to obtain the information it seeks and the FDIC has no legal basis to withhold the requested records.

RELIEF REQUESTED

WHEREFORE, Plaintiff Ira Nikelsberg requests that this Court:

- (A) Order the FDIC to immediately search for and release the requested records in their entirety and make them available to Plaintiff;
- (B) Award Plaintiff his reasonable costs and attorney's fees as provided in 5 U.S.C. § 552(a)(4)(E) and 28 U.S.C. § 2412(d);
- (C) Expedite this action in every way pursuant to 28 U.S.C. § 1657(a); and
- (D) Grant such other and further relief as this court deems just and proper.

Respectfully submitted,



Ira Nikelsberg, *pro se*
Meadows Office Complex
301 Route 17 North, 6th Floor
Rutherford, NJ 07070
(201) 806-9807

EXHIBIT A



Hain Capital Group, LLC
Meadows Office Complex, 301 Route 17 North, 6th Fl.
Rutherford, NJ 07070
Tel: 201-896-6100 • Fax: 201-896-6102
www.haincapital.com

July 16, 2008

* **VIA FACSIMILE** * (202) 898-6910
FOIA/Privacy Act Group
FDIC Legal Division
550 17th Street, NW
Washington, DC 20429

RE: Request under the Freedom of Information Act

Dear FOIA Officer,

This letter constitutes a request by me and on behalf of Hain Capital Group under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552 *et seq.*, and the FDIC implementing regulations, 12 C.F.R. § 309.1 *et seq.*

I hereby request that a copy of the documents containing the following information be provided:

1. All FDIC manuals, forms, guidelines and policy or procedure statements that relate to the processing, handling and transfer of claims of **uninsured** depositors.
2. A form of letter that accompanied each of the dividend payments made to uninsured depositors of NetBank of Alpharetta, Georgia (hereinafter "NetBank").
3. A form of Receiver Certificate (or document having similar effect), hereinafter "Receiver Certificate," that was issued to uninsured depositors of NetBank and ANB Financial, NA of Bentonville, Arkansas (hereinafter "ANB Financial").
4. A compilation of the businesses that were uninsured depositors of NetBank (including their address, phone number, e-mail address and the name and title of the contact person) to whom the FDIC issued Receiver Certificates.
5. A compilation of all of the uninsured depositors of NetBank (including their address, phone number, e-mail address and the name and title of the contact person) to whom the FDIC issued Receiver Certificates.
6. A compilation of all of the uninsured depositors of ANB Financial (including their address, phone number, e-mail address and the name and title of the contact person) to whom the FDIC issued Receiver Certificates.
7. A compilation of all other uninsured depositors of ANB Financial not included in the request in Paragraph 6 above (including their address, phone number, e-mail address and the name and title of the contact person) to whom the FDIC issued Receiver Certificates.
8. The most recent financial statement of the receivership of ANB Financial.
9. The most recent receiver report for ANB Financial.

FDIC FOIA Request

July 16, 2008

Page 2 of 2

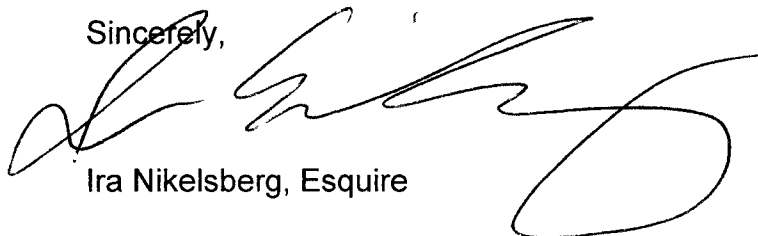
In accordance with 5 U.S.C. § 552, a response is required within 20 days. To the extent that any of the information is available in electronic format rather than in paper form, please furnish such records in electronic format on CD-ROM or other mutually acceptable media. All applicable records should be sent to me at:

Ira Nikelsberg, Esquire
Hain Capital Group
Meadows Office Complex
301 Route 17 North, 6th Floor
Rutherford, NJ 07070

Phone: (201) 806-9807
Email: inikelsberg@haincapital.com

We are willing to pay the applicable fees for this request. Pursuant to 12 C.F.R. § 309.5(f)(1)(v), if you estimate that the fees will exceed \$250, please inform me first. Thank you for your prompt attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ira Nikelsberg', with a large, stylized flourish extending from the end of the signature.

Ira Nikelsberg, Esquire

cc: Robert J. Koltai
James J. Williams

EXHIBIT B



Federal Deposit Insurance Corporation
550 17th St. NW Washington DC, 20429

Legal Division

AUG 19 2008

Ira Nikelsberg
Hain Capital Group
Meadows Office Complex
301 Route 17 North, 6th Floor
Ruthersford, NJ 07070

FDIC Log # 08-0340

Dear Mr. Nikelsberg:

This is in final response to your letter of July 16, 2008, in which you requested, pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. §552, the following records:

1. All FDIC manuals, forms, guidelines and policy or procedure statements that relate to the processing, handling and transfer of claims of uninsured depositors.
2. A form of letter that accompanied each of the dividend payments made to uninsured depositors of NetBank of Alpharetta, Georgia (hereinafter "NetBank").
3. A form of Receiver Certificate (or document having similar effect), hereinafter "Receiver Certificate," that was issued to uninsured depositors of NetBank and ANB Financial, NA of Bentonville, Arkansas (hereinafter "ANB Financial").
4. A compilation of the businesses that were uninsured depositors of NetBank (including their address, phone number, e-mail address and the name and title of the contact person) to whom the FDIC issued Receiver Certificates.
5. A compilation of all of the uninsured depositors of NetBank (including their address, phone number, e-mail address and the name and title of the contact person) to whom the FDIC issued Receiver Certificates.
6. A compilation of all of the uninsured depositors of ANB Financial (including their address, phone number, e-mail address and the name and title of the contact person) to whom the FDIC issued Receiver Certificates.
7. A compilation of all other uninsured depositors of ANB Financial not included in the request in Paragraph 6 above (including their address, phone number, e-mail address and the name and title of the contact person) to whom the FDIC issued Receiver Certificates.
8. The most recent financial statement of the receivership of ANB Financial.
9. The most recent receiver report for ANB Financial.

Items 1 and 3 of your request were sent to you under separate cover by letter dated August 1, 2008. The Receivership Certificate is located in the Claims Manual. In response to Item 2 of your request, there is no form letter attached to dividend checks. Items 4 through 7 are being

denied pursuant to subsections (b)(4) and (b)(6) of the FOIA. Subsection (b)(4) permits the withholding of commercial or financial information obtained from a person and considered privileged or confidential. Subsection (b)(6) permits the withholding of information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Once the information pertaining to items 8 and 9 of request becomes available it is posted at www.fdic.gov.

This letter constitutes formal notification that your request has been granted in part and denied in part. You have the right to appeal this response to the FDIC's General Counsel within 30 business days following receipt of this letter. Should you decide to appeal, please submit your appeal in writing to the General Counsel. Please refer to the FDIC log number and include any additional information that you would like the General Counsel to consider.

Sincerely,

A handwritten signature in black ink, appearing to read "Fredrick L. Fisch", written in a cursive style.

Fredrick L. Fisch
Supervisory Counsel